

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3180 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KANCHANBEN W/O RASVINDRA DESAI

Versus

STATE OF GUJARAT

Appearance:

MS KJ BRAHMBHATT for Petitioners
Mr S S Patel, AGP for Respondent No. 1
MR DU SHAH for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 01/03/2000

ORAL JUDGEMENT

Petitioner, by filing this petition under Articles 14 and 226 of the Constitution of India and under the provisions of Land Acquisition Act, have prayed to quash and set aside the award dated 16.9.1997 passed by respondent No.1 in respect of land bearing survey No.109 situated at village Jhol, Taluka Mahuva, District Surat. As the acquisition proceedings have been lapsed in view of the provisions of Section 11-A of the Land Acquisition Act (for short 'the Act'), two years between the notification under section 6 of the Act.

2. Brief facts are as under:

The lands of the petitioner situated at village Jhol, Taluka Mahuva, District Surat bearing survey no.109 admeasuring 1 Hectar and 8 Are was acquired by respondent No.2 for construction of industrial colony under section 4(1) of the Act which came to be published in the Government Gazette on 11.8.1994. After following the procedure under the Act, declaration under Section 6 of the Act came to be published in the Government Gazette on August 3, 1995. The said declaration was published in the daily newspaper 'Gujarat Mitra' on 21.8.1995, in Nav Gujarat Times on 20.8.1995 and it was affixed at village Chaura and at the site of the said land on 21.9.1995. After the making of the declaration under Section 6 of the Act, notice came to be served on the land owners-petitioners under Section 9 of the Act. The petitioners have alleged that the Land Acquisition Officer made the award on 16.9.1997 i.e. after a lapse of more than 2 years from the date of making of declaration under Section 6 of the Act and there is delay of more than two years and hence the award made by the Land Acquisition Officer deserves to be quashed and set aside.

3. Affidavit-in-reply has been filed by the Special Land Acquisition Officer, GIDC, inter-alia, contending that declaration under Section 6 of the Act was made by the State Government on 3.8.1995 which was published in the Government Gazette on the same day. The said declaration came to be published in the daily newspaper namely Gujarat Mitra on 21.8.1995 and in Nav Gujarat Times on 20.8.1995. It is stated that thereafter, the said notification was published under Section 6 of the Act at Village Chaura and at the site of the acquired land and on the notice board of Mamlatdars office on 21.9.1995. It is, therefore, averred that the award under Section 11 was declared by the Special Land Acquisition Officer before expiry of the period of two

years and, therefore, there is no illegality or irregularity was committed by the office of the Land Acquisition Officer and the petition be dismissed with costs.

4. Heard the learned Advocates for the petitioner and the respondent. The only contention advanced by the learned Advocate for the petitioner is that as the award under Section 11 of the Act was not made by the Collector before the expiry of two years as prescribed under the provisions of section 6 of the Act, the award deserves to be quashed and set aside. In our opinion, the submission of the learned Advocate for the petitioner deserves to be rejected. The Special Land Acquisition Officer has categorically stated in his affidavit-in-reply that the declaration under Section 6 of the Act was last published on 21.9.1995 and the award was declared before the expiry of two years i.e. on 16.9.1997. In support of the affidavit-in-reply, at the time of hearing of the petition, learned AGP Mr S S Patel had produced original record of the Land Acquisition proceedings and the averments made in the affidavit were found to be correct. Copies of the declaration made under section 6 of the ACT were affixed at the site of the acquired land as well as at the office of the Gram Panchayat on 21.9.1995. About such publication of the declaration of Section 6 of the Act, Rojkam was also prepared on 21.9.1995 which also supports the averments made in the affidavit-in-reply. The said Rojkam was signed by two independent witnesses. Thus there is no question of any doubt. The declaration under Section 6 of the Act was, therefore, last published on 21.9.1995. Admittedly, the Land Acquisition Officer had declared the award on 16.9.1997 i.e. before the expiry of the period of two years as prescribed.

5. The Division Bench of this Court in the case of Kikabhai Ukabhai Patel v. State of Gujarat, reported in 1990 (2) GLR 1043 held that publication of notification is not complete till publication on all the sides has taken place. It is further held that the Collector is required to make an Award within a period of two years from the date of publication of the declaration under Section 6 of the Act. The period of two years will expire on the last date of publication of the notification in view of the pronouncement in Kikabhai Ukabhai Patel's case (supra). In our opinion, the challenge to the award by the petitioner as being beyond the period of two years fails. In the present case, the declaration under section 6 was last published on 21.9.95 whereas the award under section 11 was made on 16.9.97 i.e. before the expiry of two years. It is thus clear

that the award was made by the Collector within two years of the last publication of declaration under section 6 of the Act and hence the award in dispute cannot be treated to be illegal on this ground. If the award in question cannot be held to be illegal on the above ground, there is no other ground to hold it illegal.

6. A similar principle is also propounded in Ismail Gulam Mahmad v. State of Gujarat, reported in 1991 (2) GLR 865.

7. These were the only contentions advanced by the learned Advocate for the petitioner. We do not find any merit in the submission.

8. As a result of the foregoing discussion, this Special Civil Application deserves to be dismissed being meritless, at the admission stage. Notice discharged. No order as to costs.

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msp.